

REMARKS

Claims 1-20 are pending while claims 1-8 and 16 have been withdrawn from consideration being subject to a restriction requirement. The restriction requirement to claims 1-8, and 16 is traversed. Claims 9-15, and 17-20 stand rejected, while claims 1, 9, 16-18, and 20 have been amended and claims 21 -24 newly added, leaving claims 1-24 for consideration upon entry of the present amendment. No new matter has been added.

Election/Restrictions

Applicants confirm provisional election of invention II, claims 9-15, and 18-20, with traverse. Applicants further acknowledge that claim 16 depends from claim 1, and is thus included in group I or invention I.

The Examiner alleges that claims 1-8, and 16, are drawn to a container with a radiant barrier, classified in class 220, subclass 592.2, while claims 9-15, and 17-20 are drawn to the method of using a deformable food bag, classified in class 426, subclass 392. Applicants respectfully traverse.

Applicants respectfully submit that the Examiner has improperly classified claims 9-15 with claims 18-20 drawn to a method of using a deformable food bag. More specifically, claims 9-15 are drawn to an apparatus, not a method. In particular, claims 9-15 are drawn to a disposable food container configured as an enveloping deformable bag.

Accordingly, it is respectfully submitted that the restriction requirement is improper. It is respectfully requested that the restriction requirement be withdrawn.

Furthermore, the Examiner alleges that the inventions are distinct, each from the other because: Inventions I and II are unrelated. The Examiner alleges that the inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different

effects (MPEP § 806.04, MPEP § 808.01).

In the instant case, the Examiner alleges that the different inventions are a container with a radiant barrier, top, and base and a method of using a deformable bag. The Examiner concludes that the method has a different mode of operation than the container since the method requires a bag, not a container with a top and base. Applicants respectfully traverse.

Applicants respectfully submit that that invention I, claims 1-8, 16, and 17 drawn to a container with a radiant barrier is related to invention II, claims 18-20, drawn to a method of using a deformable food bag, since "they are disclosed as capable of use together." (Emphasis added.) More specifically, the deformable bag is capable of use with the container (food item having a top and a base, e.g., pizza box) as disclosed and claimed in amended claim 18.

Accordingly, it is respectfully requested that the restriction requirement be withdrawn.

Claim Objections

Claim 17 is objected to because claim 17 depends from claim 17. Appropriate correction as required by the Examiner is reflected in amended claim 17 depending from claim 16.

Claim Rejections -35 USC §102

Claims 9-13, 17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Raszewski et al. (U.S. Patent No. 4,987,997). Applicants respectfully traverse.

The Examiner alleges that Raszewski et al. teach a bag having an aperture on one side with a flap that is sealed with an adhesive (Column 2, lines 20-32), an integral thermal convection barrier in the form of a foamed layer, which may include polyethylene as recited in claim 17 (Column 1, lines 50-59, Column 3, lines 34-49, Column 51-62), and an outer radiant barrier of metalized polymer that is highly reflective material (i.e. at least 60%) as recited in claims 9-11 (Column 1, line 54 to Column 2, line 4), and the radiant barrier may be polyethylene, as recited in claim 12,

wherein the metalized portion could be 25-100 microns thick, or anywhere from 0.0009 to 0.0039 inches as recited in claim 13 (Column 2, lines 55-68).

More specifically, it is respectfully submitted that Raszewski et al. teach a bag for holding and protecting articles (i.e., circuit boards) sensitive to mechanical damage as well as to electric fields, the walls of the bag being essentially a layer of cushiony microfoam about 1 to about 4 millimeters thick, an essentially unfoamed polyethylene coating about 25 to about 100 microns thick on the inside surface of the microfoam, an essentially unfoamed support layer on the opposite surface of the microfoam, at least one face of the support layer being treated to protect the bag contents against external electric fields, and the polyethylene coating carrying sufficient antistat to protect the bag contents against the build-up of static electricity to the intensity that damages those contents when they are slid into the bag. (Abstract). Specifically, Raszewski et al. teach that outer film 22 has at least one of its faces metallized to provide a Faraday Cage effect that protects anything in the bag from external electrical fields such as strong static electricity. Col. 1, lines 60-63.

Raszewski et al. teach that "[f]or thermal insulation [uses,] the foam thickness of the sandwich- foam laminate can be as thick as 25 to 50 millimeters, preferably no thinner than about 10 millimeters." (Emphasis added.) Col. 4, lines 59-62. In addition, Raszewski et al. disclose a three-ply construction inherently increasing the overall thickness. (Col. 1, lines 51-52). Raszewski et al. teach a unfoamed polyethylene film 24 that is preferably about 25 to about 100 microns thick (i.e., 0.0009 to 0.0039 inches) and provides an internal bag surface of low friction so that articles can be easily slid into the bag. (Col. 2, lines 9-12.) Raszewski et al. also disclose that support sheet 22 that is an essentially unfoamed strong covering such as a polyethylene terephthalate film need not be thicker than about 25 microns (i.e., 0.0009 inches). (Col. 1, lines 54-57.) Thus, Raszewski et al. only disclose foam providing thermal insulation having a thickness no thinner than 10 millimeters covered by at least about 25 microns on both sides of the foam for a minimum overall thickness of at least 0.0018 inches plus at least the 10mm of foam (i.e., 0.0039 inches), thus exceeding 0.0039 inches.

Raszewski et al do not teach or suggest an aperture on one side of the bag for

inserting and removing food; an integral thermal convection barrier; an integral radiant barrier configured to provide a barrier to convection and radiation of heat, said barrier configured to provide heat retention within the bag thus limiting heat loss from at least one of a beverage and food disposed in the bag; and a flap portion depending away from said bag proximate to said aperture, said flap portion being configured and dimensioned to cover and seal said aperture, as in amended claim 9. Thus claim 9, including claims depending therefrom, i.e., claims 10-15, 21 and 22, define over Raszewski et al.

Furthermore, with respect to Claim 13 and as discussed above, Raszewski et al. teach that to provide any thermal insulation uses, the foam thickness must be at least 0.0039 inches (i.e., 10 mm).

Claim Rejections -35 USC §103

Claims 14 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Raszewski et al. (U.S. Patent No. 4,987,997), further in view of Sheth et al. (U.S. Patent No. 5,055,338). Applicants respectfully traverse.

The Examiner alleges that Raszewski et al. teach either metalized polyethylene or PET from 0.0009 to 0.0039 inches and that the intended use is to protect items from external electric fields and static electricity (Column 1, lines 30-59), but are silent in teaching oriented polypropylene (OPP). The Examiner relies on Sheth et al. as evidence of the known properties of metalized films. The Examiner concludes therefore it would have been obvious to modify Raszewski et al and use a metalized OPP layer 0.0009-0.0039 inches thick since Raszewski et al teach the bag contents must be protected from static electricity and Sheth et al. also teach metalized films are used to provide a static electricity barrier in packages, with metalized OPP film being well known possessing static electricity barrier properties.

It is respectfully pointed out that claims 14 and 15 depend from claim 9 which is submitted as being allowable for defining over Raszewski et al. as discussed above. Furthermore, it is respectfully noted that use of the properties of metallized films allegedly taught in Sheth et al. does not cure the deficiencies noted above with respect

to Raszewski et al.

Moreover, The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) (Claims were directed to an apparatus for producing an aerated cementitious composition by drawing air into the cementitious composition by driving the output pump at a capacity greater than the feed rate. The prior art reference taught that the feed means can be run at a variable speed, however the court found that this does not require that the output pump be run at the claimed speed so that air is drawn into the mixing chamber and is entrained in the ingredients during operation. Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (flexible landscape edging device which is conformable to a ground surface of varying slope not suggested by combination of prior art references). In the present case, there is no suggestion or motivation in either the Raszewski et al. or the Sheth et al. reference to modify a static electricity barrier to provide a radiant and convection barrier to limit heat loss from a beverage and/or food within the container.

Claim 18 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Walsh (U.S. Patent No. 3,428,103) in view of Peebles et al. (U.S. Patent No. 6,471,065 B1) and Cliff (U.S. Patent No. 6,109,440). Applicants respectfully traverse.

Walsh discloses a fully enclosed flexible insulated container having an end closure extending part way down each side, said container having a single continuous welted sewn seam said container having a substantially rectangular interior in frontal cross-section, said container further having washable interior and exterior surfaces, and said container being insulated with thermal and reflective insulations so as to retain both conducting and radiating heat. (See Abstract). Specifically, Wash does not teach a convection barrier. Walsh discloses a flexible multi-laminar wall which is sewn to a similarly constructed end by means of a single continuous welted sewn seam. The multi-laminar wall construction consists of an upper flexible washable protective

exterior surface, a reflecting metal foil layer, a flexible relatively resilient thermally insulating layer and an inner flexible washable protective layer. Col. 1, lines 58-65. Thus, Walsh teaches away from a disposable food container configured as an enveloping deformable bag, wherein the bag eliminates an insulative layer facilitating at least one of disposal and folding thereof. In addition, Walsh discloses only a barrier against conductive heat and radiant heat. Col. 1, lines 30-33, and Col. 2, lines 55-56.

Walsh does not teach or suggest, and in fact teaches away from, an integral radiant and convection barrier configured to provide a barrier to convection and radiation of heat, said barrier configured to provide heat retention within the bag thus limiting heat loss from at least one of a beverage and food disposed in the bag; a flap portion depending away from said bag proximate to said aperture, said flap portion being configured and dimensioned to cover said aperture, wherein said bag eliminates an insulative layer facilitating at least one of disposal and folding thereof; and sealing said food within said disposable bag by sealing said aperture with said flap, as in amended claim 18. Thus claim 18, including claims depending therefrom, i.e., 19, 20, 23, and 24, define over Walsh.

Claim 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walsh (U.S. Patent No. 3,428,103) in view of Peebles et al. (U.S. Patent No. 6,471,065 B1) and Cliff (U.S. Patent No. 6,109,440) as applied to claim 18 above further in view of Zion (U.S. Patent No. 4,984,734). Applicant respectfully traverse.

The Examiner alleges that although Walsh is silent in teaching the pizza box is vented, Zion is relied on as evidence of the conventionality of providing vents in a pizza box to remove moisture and maintain crispness (Column 5, lines 40-45). The Examiner concludes that therefore it would have been obvious to provide vents in the box of Walsh since venting moisture from the pizza helps to maintain crispness and one would have been substituting one conventional pizza box design for another.

It is respectfully pointed out that claim 19 depends from claim 18 which is submitted as being allowable for defining over Walsh as discussed above. Furthermore, it is respectfully noted that use of the vents allegedly taught in Zion does not cure the deficiencies noted above with respect to Walsh.

Claims 18 and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gatward (U.S. Patent No. 4,515,840) in view of, Peeples et al. (U.S. Patent No. 6,471,065 B1) and Cliff (U.S. Patent No. 6,109,440). Applicants respectfully traverse.

The Examiner alleges that Gatward teaches materials suitable for pizza pies and food storage bags (Column 1, lines 30-34) comprising thermal and radiant barriers wherein the radiant barrier comprises a 8-35 micron polyethylene layer (Column 1, line 55 to Column 2 line 40) which may be metalized (Column 1, lines 30-37), and thus provides a .00125 inch layer of metalized material, as recited in claim 20.

Gatward discloses a laminated wrapping sheet material comprising a layer of paper of 15-35 gm.sup.-2 (gsm) gauge discontinuously bonded to a layer of thermoplastic film of 8- 35 microns gauge such that pockets of air are defined between the layers. Col. 1, lines 56-60. Pockets of air are formed between the thermoplastic film and the paper by discontinuous bonding. Thus, for example, adhesive is applied on some parts of the surface so that other areas remain unbonded. Sufficient air can be entrapped to provide useful insulation properties by ensuring that the layer of adhesive applied is suitably thick. However, it is much preferred to entrap air by embossing the paper to provide raised areas which do not contact the thermoplastic film. Col. 2, lines 13-21. Thus, Gatward teaches an insulation layer in select locations between the paper and thermoplastic layers. Accordingly, Gatward teaches away, from a bag eliminating an insulative layer facilitating at least one of disposal and folding thereof.

Furthermore, Gatward discloses a metalized coating on an exposed thermoplastic or paper layer. Gatward does not teach the purpose for such coating and does not teach an integral radiant and convection barrier configured to provide a barrier to convection and radiation of heat, said barrier configured to provide heat retention within the bag thus limiting heat loss from at least one of a beverage and food disposed in the bag.

Gatward does not teach or suggest, and in fact teaches away from, an integral radiant and convection barrier configured to provide a barrier to convection and radiation of heat, said barrier configured to provide heat retention within the bag thus limiting heat loss from at least one of a beverage and food disposed in the bag; a flap portion depending away from said bag proximate to said aperture, said flap portion

being configured and dimensioned to cover said aperture, wherein said bag eliminates an insulative layer facilitating at least one of disposal and folding thereof; and sealing said food within said disposable bag by sealing said aperture with said flap, as in amended claim 18. Thus claim 18, including claims depending therefrom, i.e., 19, 20, 23, and 24, define over Gatward.

Moreover, Gatward does not teach or suggest, and in fact teaches away from, wherein said bag is manufactured solely out of a metallized polyethylene about 0.00125 inches thick as in amended claim 20.

CONCLUSION

In view of the above-presented amendments and accompanying remarks, it is respectfully submitted that all of the pending claims, Claims 1-24 are patentable over the prior art and allowance is respectfully requested.

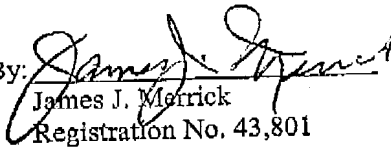
If, however, any issues remain, the Examiner is cordially invited to contact the undersigned so that such issues may be promptly resolved.

If there are any charges with respect to this amendment, or otherwise, please charge them to Deposit Account No. 06-1130 maintained by applicants' attorneys.

Respectfully submitted,

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